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PUEBLO OF ACOMA
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**Written Testimony of Governor Brian Vallo
Pueblo of Acoma
Before the
House Natural Resources
Subcommittee for Indigenous Peoples of the United States
Hearing on the
Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, H.R. 3846
September 19, 2019**

On behalf of the Pueblo of Acoma ("Pueblo" or "Acoma") please accept this written testimony for the record of the full committee hearing on the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, **H.R. 3846** by the **House Natural Resources Subcommittee for Indigenous Peoples of the United States** on Thursday, September 19, 2019.

The Pueblo appreciates the opportunity to submit testimony on this important legislation to the Committee and your staff. We have experienced and responded to various situations associated with both combating illegal trafficking of our protected tribal cultural heritage and in seeking repatriation of those items. The Pueblo is grateful for the opportunity to share this experience with you.

I. The Pueblo's Experience Related to the Protection of Tribal Cultural Heritage Items

A. Background

Acoma, located in western New Mexico, is an ancient and sacred place. For over a thousand years, our people have made their home at Acoma, or *Haak'u*, one of the oldest continuously inhabited communities in North America, which remains the center point of our cultural practices that have sustained us since time immemorial. Critical to these life-sustaining practices are items of our tribal cultural heritage that have specific roles, meaning, and use within a complex interrelationship of our culture, societies, families, intergenerational exchange, and way of life. Acoma's tribal cultural heritage is so necessary to the ongoing systems of our culture that

they belong to the present-day and future community as a whole. No individual may own this patrimony. Moreover, under Acoma's traditional law, which is incorporated through Acoma's statutes, the caretakers of these items cannot sell or remove them from Acoma lands.¹ When these life-sustaining items are removed from us, the core of Acoma suffers because it jeopardizes the continuation of our culture, our values, and who we are as Acoma people in a direct and palpable way.

At Acoma, various types of the Pueblo's cultural heritage may be stored, cared for, or used differently depending on what the item is. For example, some cultural heritage may be cared for and stored by individuals or families in their homes. Other times, different cultural heritage items may be cared for and stored in communal and ceremonial buildings of specific societies or clan groups. Other times, these objects may be placed outside in open spaces or within specific sacred shrines. Items are placed as offerings in special places to be left there permanently, not unlike the San Ildefonso Pueblo object at issue in the case of *Pueblo of San Ildefonso v. Ridlon*, 103 F.3d 936 (10th Cir. 1996), or the removal and repatriation of the Zuni War Gods in the late 1980s (a well-known example of the removal of cultural objects from area shrines, and an important example in the development of Native American Graves Protection and Repatriation Act ("NAGPRA")). Regardless of their placement, they belong to the Pueblo of Acoma because they exist for the Pueblo as a whole.

B. Acoma's Efforts to Combat Trafficking.

Unfortunately, many people view our cultural heritage as works of art, as curiosities of a foreign culture, or as ethnographic material to be collected, traded, and sold for profit. That is the complete opposite of their intended purpose and an affront to the Pueblo of Acoma. Acoma has an extensive and thriving community of artists, including many Acoma potters who are world renowned for the creation of traditional, handmade pottery with intricate designs and delicate artisanship. Despite an extensive repertoire of Tribal Cultural Heritage, the works of Acoma artisans are entirely separate and clearly distinguished as art, produced for the express purpose of commerce. Therefore, when the Pueblo of Acoma raises its voice to identify an item of tribal cultural heritage that it has discovered being sold, it is because the Pueblo has identified materials, while created by Acoma cultural practitioners of our past and present, should never have left the Pueblo. The viewing of an item of tribal cultural heritage "in the wild," whether it be for sale at auction, in a gallery, or online; tells us that a violation of Acoma traditional law occurred, and possibly a violation of federal laws.

¹ The closest analogy to describe the Pueblo's traditional law concerning items of cultural heritage is the legal concept of property rights being that of a "bundle of sticks." For the Pueblo, some members may have rights of possession, but they do not have the right to sell an item of cultural heritage. Traditional law dictates what is to happen to an item of cultural heritage if a caretaker can no longer care for the item. The right to sell an item of cultural heritage, although not contemplated in the Pueblo's traditional law, would be exclusively reserved to the Pueblo itself. Certainly, the Pueblo has never exercised this right. The Pueblo's traditional law most closely mirrors the definition of "cultural patrimony" defined under the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001(3)(D).

It is important to understand that existing federal laws protect only specific types of items associated with Native American tribes. Most items are not protected. NAGPRA, the Archaeological Resources Protection Act ("ARPA"), 16 U.S.C. §§ 470aa–470m, and the Antiquities Act, 16 U.S.C. §§ 431–433 repealed and re-codified at 54 U.S.C. §§ 320301–320303, 18 U.S.C. § 1866, have specific statutory standards for the items they protect. Generally, they must meet a threshold level of cultural significance and must have been taken from specific lands within a specific time. Although tribes are involved in determining which items are protected, *see United States v. Tidwell*, 191 F.3d 976, 980 (9th Cir. 1999), they cannot claim items are protected if they do not meet these statutory standards. In investigating the authenticity of an item, Acoma has developed its Tribal Historic Preservation Office Advisory Board, consisting of experienced Acoma tribal cultural leaders and practitioners. Their collective cultural knowledge and expertise is utilized to assess available information about an item to determine its authenticity as Acoma. An assessment may include, but not be limited to, viewing photographs, in-person evaluation, or additional interviews with community members who may have particular information about an item of cultural heritage. Their expertise and ultimate recommendation is critical in Acoma deciding to proceed with claiming an item as its cultural heritage. Acoma also proceeds in recognition of federal definitions and only claims items or refers to federal authorities for investigation, those that the Pueblo believes to meet federal standards.

Over the years, the Pueblo has gained extensive experience in the protection of its tribal cultural heritage. Some of the earliest recorded incidents of the Pueblo's efforts to regain its cultural heritage involve federal criminal convictions handed down just after the 1990 passage of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001–3013, 18 U.S.C. § 1170. In *United States v. Brian Garcia and Gerald Garcia*, 92-515 JC (D.N.M. 1992), two Acoma brothers pled guilty to illegally trafficking the Pueblo's cultural heritage in violation of NAGPRA. The Pueblo worked closely with the United States Attorney's Office to verify the provenance of the items sold. This case represents the importance of this issue to the Pueblo, even pursuing the federal conviction of our own people. Later, in 1999, another example in *United States v. Tidwell*, 191 F.3d 976 (9th Cir. 1999), involved a set of historic Catholic priest robes cared for by the Pueblo, dating from the early 18th Century. These robes were recovered along with other cultural items belonging to the Hopi Tribe. A Bureau of Indian Affairs (BIA) special agent investigated a non-Indian tribal art and antique dealer, leading to his conviction and the recovery of these items.

Later, in the 2000s, as national and international auction houses began to expand and reach more collectors through the Internet, the Pueblo became significantly more involved in attempting to identify and recover its cultural heritage. Unfortunately, this also meant the Pueblo did not become aware of an item's existence outside of the Pueblo until critical periods when an item was moved from private collections to public sales.² In 2006, the Pueblo worked diligently with its legal counsel for the return of original carved wooden beams and doors from the San Estevan del

² As stated before, Acoma's items of cultural heritage are intentionally dispersed throughout the community. Because of their sensitive nature and Acoma traditional law, there is no comprehensive schedule of all Acoma items of cultural heritage, their caretakers, and location within the community. Therefore, many times when Acoma discovers items at sale, it may be the first instance in which the Pueblo is aware of their illegal removal from Acoma boundaries.

Rey Mission Church.³ A national auction house had possession of the wooden beams along with nearly 50 other items of cultural heritage belonging to the Pueblo. While the Pueblo was unable to retrieve all items, the beams and other items of cultural patrimony were removed from the auction block and successfully returned to the Pueblo. Acoma then began to informally monitor the internet and upon locating items, developed protocols with some internet marketplace providers in the United States to remove items from their sites.

In 2015, Acoma became aware of a resurgence in the sale of its cultural heritage at markets both domestically and internationally. This marked a larger trend, most notably made public by the international sale of Hopi and other Tribes' items of cultural heritage.⁴ The Pueblo uncovered a disturbing number of its cultural heritage items for sale in a variety of contexts in locations locally, nationally, and internationally. Since 2015, the Pueblo of Acoma has identified nearly 75 items of its cultural heritage being offered for sale or already sold. The Pueblo was successful in repatriating less than half of these items. Acoma traditional law does not allow the Pueblo to purchase these items back; Acoma was able to obtain these items through negotiations with the purported sellers or through investigations by federal authorities. Worse, the Pueblo is continuously learning the full extent of its lost cultural heritage that has been trafficked and sold through the viewing of prior auction or sale results, or the appearance of Acoma cultural heritage in private collections or in national and international museum collections.

One of the most well-known examples is Acoma's fight to regain an important ceremonial shield ("Acoma Shield"), which was set to be auctioned by the Eve Auction House in Paris, France in May of 2016. Acoma did not become aware of the Shield's whereabouts until the Pueblo learned of its listing at auction. Through its own internal investigation, Acoma confirmed that it was one of a group of Acoma Shields stolen from the home of their caretaker in the 1970s, sold within the domestic art market, and was eventually exported overseas, consigned to the Eve Auction House. Although we had the unprecedented success of removing the Acoma shield from the auction block with the help of our congressional delegation, federal agency officials, Indian country, and the public, to date, the Acoma Shield has not yet returned. Since the auction, the United States, in coordination with the Pueblo, initiated an *in rem* action in federal district court, where the Pueblo of Acoma and the consignor came forward to claim the shield. It was not until March of 2019 that the Pueblo had the opportunity to work directly with the consignor, leading to a settlement agreement, inclusive of all parties including the United States, to secure the shield's return to the Pueblo. We are currently awaiting the shield's return to the United States and the long-anticipated return to Acoma.

In light of these experiences, our fear remains that there are many more items that have been taken outside the United States, and there will be an increased demand for Native American cultural heritage beyond the United States, increasing the incidents of exportation. Acoma does

³ The San Estevan del Rey Mission Church sits atop the mesa at the Pueblo. Founded in 1629, it is still cared for and maintained by the Pueblo's people.

⁴ See "Figure 2: Timeline of Overseas Auctions and Key Actions Federal Agencies and Tribes Have Taken in Response to Them." U.S. Gov't Accountability Office, GAO-18-537, *Native American Cultural Property: Additional Agency Actions Needed to Assist Tribes in Repatriating Items from Overseas Auctions* (2018).

not place a monetary value on cultural heritage. However, in Acoma's experience in combating the trafficking and sale of its cultural heritage, we see the price of an item increase within the international market. Some of the highest prices for these materials exist in overseas markets. This strongly suggests that there is an incentive for dealers to export cultural heritage items to individual collectors, dealers, and auction houses overseas.⁵

Based on Acoma's experience, the Pueblo believes there is a need for explicit exportation restrictions and a regulatory framework to screen the exportation of tribal cultural heritage. For example, the Pueblo of Acoma learned of the existence of Acoma and other Pueblo cultural heritage items in a private collection in Switzerland. The Pueblo has learned that some of these items had been sold in the United States at auction within the last 5 years. The Pueblo has referred this matter to federal authorities for investigation. However, had an exportation restriction and screening process, such as that proposed in the STOP Act been in place at the time of the items' exportation, Acoma and other Pueblo tribes may have been able to raise their concerns before exportation. For those items Acoma knows to have been exported and sold overseas through our research of prior auction results at places like the Eve Auction House, the STOP Act could have provided a way for the Pueblo to identify these items. Unfortunately, these cherished items may be lost forever.

II. Support for the STOP Act

Acoma strongly believes the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, H.R. 3846 is the mechanism for protecting items of cultural heritage from being exported in violation of United States laws.⁶ Therefore, the Pueblo fully supports the passage of the STOP Act. Through Acoma's experience, we have learned that existing federal laws are not enough. The STOP Act places an emphasis on facilitating the return of protected items trafficked internationally, where we have been the least successful at repatriation of our cultural heritage. These provisions are designed to safeguard tribal cultural heritage items within our respective tribal communities where they belong and, eliminate any future, illegal exportation, and most importantly, to facilitate the return of those that have left tribal possession.

Current federal law does not adequately protect the hundreds of cultural items that have been trafficked from the United States to international markets. A quick look at past auction

⁵ For example, a 2013 Néret-Minet Tessier & Sarrou auction earned \$1.2 million. See "The Auction of Native American Artifacts", THE ATLANTIC, (May 27, 2016) (available at: <https://www.theatlantic.com/international/archive/2016/05/native-american-auction/484316/>). Another example, an Acoma shield repatriated to the Pueblo of Acoma in December 2018 after the federal investigation and seizure of the shield from an art gallery in Montana was priced at nearly \$6,500. This is compared to the price of the Acoma Shield attempted to be sold by the Eve Auction House in 2015 and 2016, which in separate listings estimated the price at approximately \$7,784 to \$27,316. See Verified Complaint for Forfeiture In Rem, *United States of America v. Acoma Cermonial Shield*, (No: 1:16-cv-00832-MV-KBM)(D.N.M.) (Jul. 20, 2016).

⁶ Congress has already expressed its concern about and condemnation of these international sales of items protected from sale in the United States. See H.Con.Res. 122 - 114th Congress (The Protection of the Right of Tribes to stop the Export of Cultural and Traditional Patrimony Resolution or the PROTECT Patrimony Resolution). The STOP Act goes further to explicitly incorporate protections against export into federal law.

catalogues of places where Pueblo cultural heritage has been sold reveals the sheer enormity of tribal cultural heritage that has left the country. This includes Acoma items that we fear may never return home. The STOP Act is an important tool to close the door on the illegal trafficking of cultural heritage and establishes, by federal law, the framework for a more holistic and accountable process for the protection of Native American cultural resources.

The STOP Act's certification system also allows the United States and tribes to screen those items that may have been acquired illegally when exportation is proposed. To be clear, the STOP Act's prohibition on exportation applies only to items already protected in the United States under NAGPRA, ARPA, or the Antiquities Act. The STOP Act does not make illegal the exportation of any items that were legally acquired and eligible to sell domestically and does not impact items that were not already protected under federal law. The antiquities industry has been operating under the definitions in these laws for decades.

Acoma recognizes that individuals may come into possession of items (collections) of cultural heritage through a variety of means and may wish to repatriate these items without knowing where to begin and with some apprehension, fearing legal repercussions. The STOP Act creates a framework to facilitate the voluntary return of items of cultural heritage to tribes. This mutually rewarding process will enable individuals to legally return critical items, central to their cultural beliefs and practices, to the appropriate tribal groups

Finally, the STOP Act creates a tribal working group to advise the federal government on issues related to protection of tribal cultural heritage. The working group would coordinate closely with the appropriate federal agencies and committees of the federal government that deal with tribal cultural heritage protection issues. It is anticipated the working group will facilitate and promote collaboration among agencies and others.

III. Conclusion

The Pueblo of Acoma and other Tribes have actively reasserted their claims to items of cultural heritage illegally sold and exported. This activity has created a surge of interest in this issue among collectors, dealers, and the international art market and has resulted in increased enforcement by federal agencies via coordinated efforts with tribes. We can no longer accept the ebbs and flows of interest on this critical issue; we must ensure the protection of our tribal cultural heritage. The STOP Act creates a permanent regulatory solution to ensure items of tribal cultural heritage are not illegally exported, accountability of the legal antiquities market, and the opportunity for tribes to build and expand their positive relationships with the public for the return of cultural heritage. We respectfully ask you to join the Pueblo of Acoma in this effort by ensuring the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, H.R. 3846.